



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 625-00
21 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CAPT [REDACTED] US [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 20 Dec 99 w/attachment
(2) PERS-06 memo dtd 5 Apr 00
(3) PERS-834C memo dtd 25 Apr 00
(4) PERS-85 memo dtd 9 May 00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show he was promoted to the grade of captain with a date of rank and effective date of 1 August 1993, before his retirement on 8 October 1996, rather than promoted to that grade as a retired officer effective 1 November 1999. He further requested that his Department of Defense (DD) Form 214 (Certificate of Release or Discharge from Active Duty), the last document at enclosure (1), be changed to show that he retired as a captain, with a date of rank of 1 August 1993, by reason of permanent disability, rather than as a commander by reason of temporary disability.

2. The Board, consisting of Messrs. Ensley and Schultz and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 20 July 2000, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) Office of Legal Counsel (PERS-06), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner's request warrants limited favorable

action. Specifically, they recommend that his record be corrected to reflect that his promotion to captain under title 10 U.S.C. 1372 was effected on 8 October 1996, the date he was placed on the temporary disability retired list (TDRL), rather than 1 November 1999, the date he was placed on the permanent disability retired list.

c. In correspondence attached as enclosure (3), the NPC Personnel Performance and Security Division (PERS-834C) stated that they had no information regarding Petitioner's case on which to base a recommendation.

d. In correspondence attached as enclosure (4), the NPC Officer Promotions and Enlisted Advancements Division (PERS-85) indicated they concurred with PERS-06.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (4), the Board finds the existence of an injustice warranting partial relief, correction of Petitioner's record to show his promotion to captain as a retired officer was effected on 8 October 1996, the date of his transfer to the TDRL.

The Board denies Petitioner's request to change his DD Form 214 to show his retirement as a captain by reason of permanent disability. They find that his DD Form 214 correctly shows that on his last day of active duty, the day before his transfer to the TDRL, he held the grade of commander, rather than captain. They further find that the reason he left active duty was, in fact, temporary rather than permanent disability.

In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show that his promotion to captain as a retired officer under 10 U.S.C. 1372 was effected on 8 October 1996, rather than 1 November 1999.


b. That any material or entries inconsistent with the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

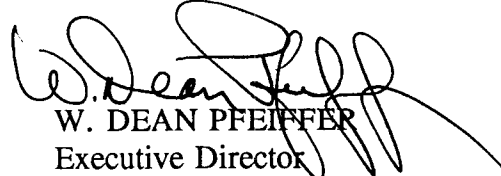
d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

PERS-06

APR 05 2000

MEMORANDUM FOR BCNR COORDINATOR (PERS-00ZCB)

Subj: REQUEST FOR ADVISORY OPINION IC [REDACTED]

1. This responds to your request for comments and recommendations on the petition of [REDACTED] USN (RET), 395-50-0876 to amend his service record. CAPT [REDACTED] seeks to have his DD-214 amended to indicate that he retired at the grade of Captain, with a date of rank of 1 August 1993. This change would entitle [REDACTED] to an undetermined amount of back pay for the period 1 August 1993 to 1 November 1999.

2. [REDACTED] was the Commanding Officer, VAW-110, when the squadron sponsored a hospitality suite at Tailhook '91 in which a "leg shaving booth" was conducted in the hospitality suite. CDR [REDACTED] was recommended for promotion to O-6 by the FY-93 Selection Board. If his promotion had proceeded in due course, his date of rank would have been 1 August 1993. Despite the President forwarding his name to the Senate for its advice and consent three times (1994, 1995 and 1997), his nomination was never acted upon by the Senate apparently due to his involvement with Tailhook '91.

3. CDR [REDACTED] subsequently developed a serious illness and was placed on the Temporary Disabled Retired List (TDRL) on 8 October 1996 in the grade of commander. After [REDACTED] was re-evaluated by the Physical Evaluation Board during the fall of 1999, the Secretary of the Navy directed that [REDACTED] be placed on the Permanent Disabled List (PDL) in the grade of captain effective 1 November 1999.

4. The Secretary of the Navy's basis for placing [REDACTED] on the PDL as a captain was 10 U.S.C. §1372 that states:

Unless entitled to a higher grade under some other provision of law, any member of an armed force who is retired for physical disability ... is entitled to the grade equivalent to the highest of the following:

...
(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

...



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1611
Ser 834C/569
25 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: CAPT ~~XX~~
~~XX~~ USN

Ref: (a) BCNR memo 5420 Pers-00ZCB of 10 Apr 00

Encl: (1) BCNR file 00625-00 w/Service record

1. Reference (a) requested comments and recommendations concerning the petition of [REDACTED] to amend his DD-214 to indicate that he retired in the grade of captain, with a date of rank of 1 Aug 93. Enclosure (1) is returned as a matter under the purview of BCNR.
2. PERS-83 holds no records regarding [REDACTED]'s case. Due to the sensitive nature of the 1991 Tailhook Convention, all files related to this event are being maintained by PERS-06. Accordingly, this office has no information regarding [REDACTED]'s case on which to base a recommendation.

Commander, U.S. Naval Reserve
Director, Personnel Performance &
Security Division (PERS-83)



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
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MILLINGTON TN 38055-0000

625-00

5420
PERS-85
9 May 00

MEMORANDUM FOR BCNR COORDINATOR

Subj: CAPT [REDACTED] USN (RET), [REDACTED]

Encl: (1) BCNR File

Ref: (a) PERS-06 ltr of 5 Apr 00

1. Enclosure (1) is returned.

2. Concur with the recommendation of reference (a) that CAPT [REDACTED] date of rank be adjusted to 8 October 1996.

[REDACTED]
BCNR Liaison, Officer Promotions and
Enlisted Advancements Division